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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY DIVISION**

BETTY JO HALL,

Plaintiff,
v.

CAPITAL ONE BANK (USA), N.A.,

Defendant.

**PLAINTIFF'S COMPLAINT
FOR DAMAGES**

CIV-17-733-M

COMPLAINT

NOW COMES Plaintiff, BETTY JO HALL ("Plaintiff"), through her attorneys, hereby alleges the following against Defendant, CAPITAL ONE BANK (USA), N.A. ("Defendant"):

INTRODUCTION

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. § 227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.
3. Venue is proper in the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a

1 substantial part of the events or omissions giving rise to the herein claims occurred, or a
2 substantial part of property that is the subject of the action is situated within this District.

3 **PARTIES**

- 4 4. Plaintiff is a natural person residing in Kay County, in Ponca City, Oklahoma.
- 5 5. Defendant is a Delaware corporation doing business in the State of Oklahoma with its
6 principal place of business located in Stamford, Connecticut.
- 7 6. At all times relevant to this Complaint, Defendant has acted through its agents
8 employees, officers, members, directors, heir, successors, assigns, principals, trustees,
9 sureties, subrogees, representatives and insurers.

10 **FACTUAL ALLEGATIONS**

- 11 7. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
12 debts incurred through purchases made on credit issued by Defendant.
- 13 8. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (580)
14 352-41XX.
- 15 9. Defendant placed collection calls to Plaintiff from phone numbers including, but not
16 limited to (866) 953-7906, (800) 955-6600, and (954) 510-9798.
- 17 10. Per its prior business practices, Defendant's calls were placed with an automated
18 telephone dialing system ("auto-dialer").
- 19 11. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. §
20 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt
21 allegedly owed by Plaintiff, BETTY JO HALL.
- 22 12. Defendant's calls constituted calls that were not for emergency purposes as defined by
23 47 U.S.C. § 227(b)(1)(A).
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1 13. Defendant never received Plaintiff's "prior express consent" to receive calls using an
2 automatic telephone dialing system or an artificial or prerecorded voice on her cellular
3 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

4 14. On or about January 30, 2017, at or about 10:48 a.m. Pacific Standard Time, the Plaintiff
5 called into Defendant's company at phone number (866) 953-7906 and spoke with
6 Defendant's male representative and requested that Defendant cease calling Plaintiff's
7 cellular phone.

8 15. During the conversation on January 30, 2017, Plaintiff gave Defendant both her phone
9 number and social security number to assist Defendant in accessing her account before
10 asking Defendant to stop calling her cell phone.

11 16. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular
12 telephone and/or to receive Defendant's calls using an automatic telephone dialing
13 system in her conversation with Defendant's representative on January 30, 2017.

14 17. Despite Plaintiff's request to cease, Defendant placed another three (3) collection calls to
15 Plaintiff on February 2, 2017.

16 18. Defendant continued to place collection calls via auto-dialer to Plaintiff's cell phone
17 through March 27, 2017.

18 19. On or about December 8, 2016, Defendant called Plaintiff's cell phone via auto-dialer.
19 Plaintiff answered the call and spoke with Defendant's representative and requested that
20 Defendant again cease calling Plaintiff's cellular phone

21 20. Plaintiff again revoked any consent, explicit, implied, or otherwise, to call her cellular
22 telephone and/or to receive Defendant's calls using an automatic telephone dialing
23 system in her conversation with Defendant's representative on December 8, 2016.
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1 21. Despite Plaintiff's request that Defendant cease placing automated collection calls,
2 Defendant placed at least seventy-eight (78) automated calls to Plaintiff's cell phone.

3 **FIRST CAUSE OF ACTION**
4 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
5 **47 U.S.C. § 227**

6 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
7 forth above at Paragraphs 1-21.

8 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
9 negligent violations of the TCPA, including but not limited to each and every one of the
10 above cited provisions of 47 U.S.C. § 227 et seq.

11 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
12 entitled to an award of \$500.00 in statutory damages, for each and every violation,
13 pursuant to 47 U.S.C. § 227(b)(3)(B).

14 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

15 **SECOND CAUSE OF ACTION**
16 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**
17 **PROTECTION ACT**
18 **47 U.S.C. § 227 et. seq.**

19 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
20 forth above at Paragraphs 1-25.

21 27. The foregoing acts and omissions of Defendant constitute numerous and multiple
22 knowing and/or willful violations of the TCPA, including but not limited to each and
23 every one of the above cited provisions of 47 U.S.C. § 227 et seq.

1 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
2 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
3 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

4 29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, BETTY JO HALL, respectfully requests judgment be entered
7 against Defendant, CAPITAL ONE BANK (USA), N.A., for the following:

8 **FIRST CAUSE OF ACTION**

9 30. For statutory damages of \$500.00 multiplied by the number of negligent violations of the
10 TCPA alleged herein (78); \$39,000.00;

11 31. Actual damages and compensatory damages according to proof at time of trial;

12 **SECOND CAUSE OF ACTION**

13 32. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful
14 violations of TCPA alleged herein (78); \$117,000.00;

15 33. Actual damages and compensatory damages according to proof at time of trial;

16 **ON ALL CAUSES OF ACTION**

17 34. Actual damages and compensatory damages according to proof at time of trial;

18 35. Costs and;

19 36. Any other relief that this Honorable Court deems appropriate.

20 **JURY TRIAL DEMAND**

21 37. Plaintiff demands a jury trial on all issues so triable.

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24 RESPECTFULLY SUBMITTED,

1 DATED: July 7, 2017

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3 **COZMYK LAW OFFICES, LLC**

4 By: /s/ Peter Cozmyk

5 PETER COZMYK (0078862)

6 *Attorney for Plaintiff*

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